The perils of open justice for young people

Research findings from the Top End

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THE PERILS OF OPEN JUSTICE FOR YOUNG PEOPLE:

RESEARCH FINDINGS FROM THE TOP END

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OUTLINE

- Open justice
- Legal context
- Research project
- Main findings
- Legal issues
- Conclusions

OPEN JUSTICE

- The principle of open justice is fundamental to the common law
- Justice must "manifestly and undoubtedly be seen to be done" (R v Sussex Justices (1924) IKB256, 259)

LEGAL CONTEXT

NORTHERN TERRITORY

YOUTH JUSTICE ACT 2005 (NO 32 OF 2005) - SECT 50
Restriction of publication of proceedings

(1) The Court may, in an order under section 49 or by a separate order, direct that a report of, or information relating to, proceedings in the Court, or the result of proceedings against a youth before the Court, must not be published.

NSW Legislative Council Report 35
April 2008
Standing Committee on Law and Justice

The prohibition on the publication of names of children involved in criminal proceedings

RECOMMENDATIONS
- Unanimous report
- Maintain protections
- Extend to investigative stage
- Uniform laws

GOVERNMENT RESPONSE
- Accept 7 of 8 major recommendations
- No to investigative stage
- Consider guidance to courts

UN CONVENTION ON THE RIGHTS OF THE CHILD
Article 40

1. States parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth …

2(b) every child alleged as or accused of having infringed the penal law has at least the following guarantees: …

vii) to have his or her privacy fully respected at all stages of the proceedings.

UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE (BEIJING RULES)

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

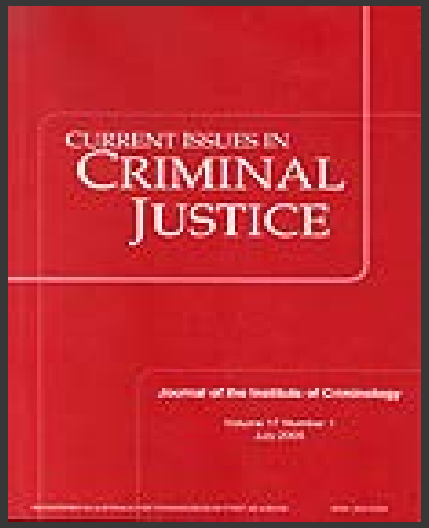
8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

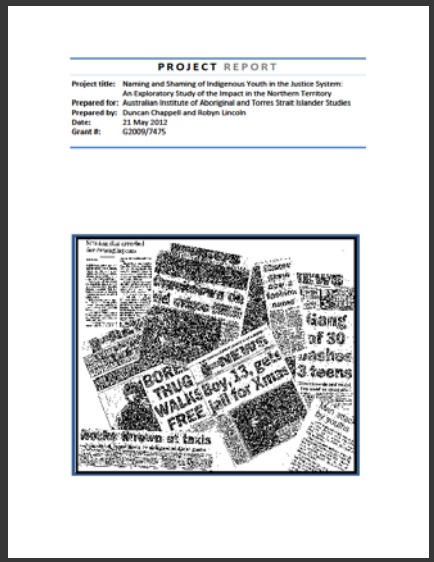
Chappell and Lincoln:

Abandoning Identity Protection for Juvenile Offenders [2007] CICJ 18(3) 481-487

Shhh … We Can't Tell You: An Update on the Naming of Young Offenders [2009] CICJ 20(3), 476-484

Naming and Shaming of Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory, 21 May 2012, G2009/7475, AIATSIS, Canberra





RESEARCH PROJECT

Multiple methodologies over several field trips:

1. Media analysis online and microfiche
2. Interviews with key stakeholders
3. Observations in youth justice court
4. Case study analysis

MAIN FINDINGS

Across the multiple methods:

1. Presence of collective shaming
2. Lack of individual naming (with exceptions)
3. Inconsistency across cases and stages
4. Naming as politicised rhetoric

Legal issues:

1. Practice directions
2. Suppression orders
3. Legal relationship with clients

presence of collective shaming

The main media source (NT News) featured many articles about juvenile offending in general

Data were gathered via online searches using search terms, daily observations of its online publication, or personal searches using the microfiche at the state library

The articles contained much negative language and focused on youth and teens and labelled them as “thugs” with interviewees claiming sensationalised coverage especially for Indigenous young people

lack of individual naming

There was a conflict with welfare provisions which meant that the youth justice court was often “closed” to protect those under the care of the “state”

There were policy constraints in some media organisations (such as the ABC) and some ethical considerations

There was little journalistic interest in the proceedings of the youth court, except when notified of a more salacious case (see our case study examples)

inconsistency across cases and stages

Some young people were singled out for sustained media attention

There were inconsistent practices across cases about who were named or not with discretional differences among magistrates

Inconsistencies within cases where a young person was named and then a suppression order was granted

naming as political rhetoric

Many key stakeholders interviewed were not aware of the provisions in the NT legislation to permit the naming of juveniles

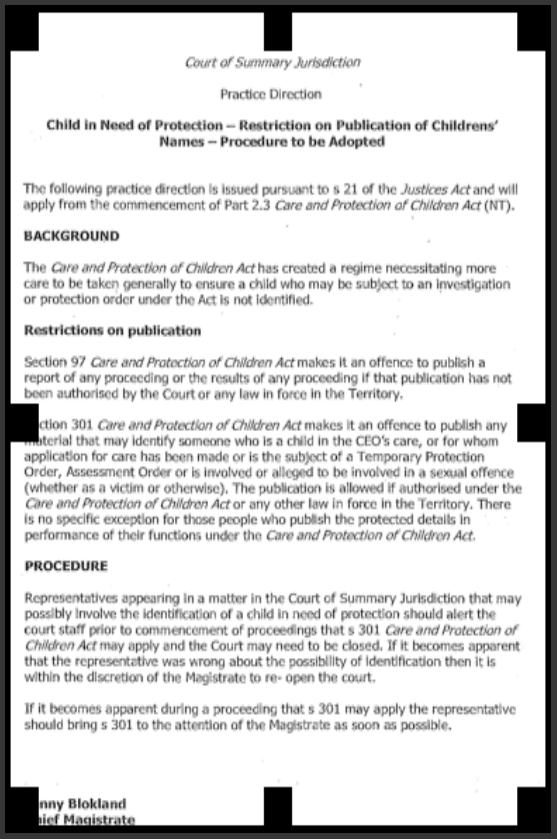
Of the 2000+ relevant articles retrieved less than 80 specifically named a young person

PRACTICE DIRECTIONS

Section 97 of the Care and Protection of Children Act (NT) makes it an offence to publish the results of any proceeding if that publication has not been authorised 'by the Court or any law in force in the Territory'.

Section 301 makes it an offence to publish any material that might identify someone who is a child in care and protection, or for whom application for care has been made.

To give effect to these provisions the Chief Magistrate issued a Practice Direction in 2008



Court of Summary Jurisdiction

Practice Direction

Child in Need of Protection – Restriction on Publication of Childrens' Names – Procedure to be Adopted

The following practice direction is issued pursuant to s 21 of the *Justices Act* and will apply from the commencement of Part 2.3 *Care and Protection of Children Act* (NT).

BACKGROUND

The *Care and Protection of Children Act* has created a regime necessitating more care to be taken generally to ensure a child who may be subject to an investigation or protection order under the Act is not identified.

Restrictions on publication

Section 97 *Care and Protection of Children Act* makes it an offence to publish a report of any proceeding or the results of any proceeding if that publication has not been authorised by the Court or any law in force in the Territory.

ction 301 *Care and Protection of Children Act* makes it an offence to publish any terial that may identify someone who is a child in the CEO's care, or for whom application for care has been made or is the subject of a Temporary Protection Order, Assessment Order or is involved or alleged to be involved in a sexual offence (whether as a victim or otherwise). The publication is allowed if authorised under the *Care and Protection of Children Act* or any other law in force in the Territory. There is no specific exception for those people who publish the protected details in performance of their functions under the *Care and Protection of Children Act*.

PROCEDURE

Representatives appearing in a matter in the Court of Summary Jurisdiction that may possibly involve the identification of a child in need of protection should alert the court staff prior to commencement of proceedings that s 301 *Care and Protection of Children Act* may apply and the Court may need to be closed. If it becomes apparent that the representative was wrong about the possibility of identification then it is within the discretion of the Magistrate to re- open the court.

If it becomes apparent during a proceeding that s 301 may apply the representative should bring s 301 to the attention of the Magistrate as soon as possible.

nny Blokland
ief Magistrate

SUPPRESSION ORDERS

Difficult to secure, the application is lengthy and need to include "evidence" of the potential negative outcomes of publicity ie "direct harm to the youth"

There are no statistics kept on number of applications nor successful ones but "the numbers granted … are relatively limited"

Some reluctance by legal counsel to seek a suppression order for it can have the unintended consequence of attracting media attention

The treatment of them in the court system is inconsistent and there is the need for uniformity across courts and jurisdictions

LEGAL RELATIONSHIP WITH CLIENTS

A surprising findings was the claim that “public naming” and “open courts” for youth are likely to lead to less disclosures or exhibitions of remorse

Some of the young clients came from truly horrendous backgrounds and had experienced significant trauma but legal officers felt that these factors were less likely to be raised in open court

More importantly the open nature of the youth proceedings can interfere with the client-lawyer relationship for as one said “no-one wants to hear their mother described as hopeless in an public forum”

CONCLUSIONS

- In the NT there is generalised shaming on youthful offenders but less individual naming than was anticipated
- However, some young people are singled out for sustained media attention with multiple media articles or ongoing media coverage
- While the frequency of the use of 'naming and shaming' is relatively low the impact is high in a small community and the consequences are severe for the youth, their families and their immediate community
- There are, of course, particularities about the NT especially its juvenile justice system (court lists published online and in foyer, lack of separate facilities) that are unlikely to be found in other jurisdictions

Thank you, comments and questions please!